

REMARKS

Claims 1-34 are presently pending in the application. Claims 1, 2, 7, 8, 12, 24-27 have been amended, claim 35 has been added and claim 23 has been cancelled. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

The Applicant believes and continues his traversal to the restriction requirement from the Examiner. The Applicant believes that claims 29-34 are related to the other presently pending claims as a manufacturing apparatus for making the same. Furthermore, it would not be an undue burden to examine claims 29-34 along with the other pending claims.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-28 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

Notwithstanding, minor amendments have been made to overcome these rejections. The Examiner's remark, "In claim 12, line 3, "the" should be canceled is not understood by the Applicant. "The" was deleted from line 2. Accordingly, it is respectfully requested that the instant rejection be withdrawn.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yueh (U.S. Pat. No. 3,863,017). This rejection is respectfully

traversed. It is believed that the originally filed claims are patentably distinct from the cited reference.

Notwithstanding, independent claim 1 has been amended to recite "a fish based food product comprising two materials, a texturization aerated paste material and an extrusion cooked fibrous material." Rather than reciting a method of forming the fish based food product, independent claim 1 recites those elements that the fish based food product comprise. The Examiner is legally incorrect and it is significant that a "patent Applicant is free to recite features of an apparatus either structurally or

They are not making a distinction over Yueh product.
functionally." In re Schreiber, 44 U.S.P.Q. 2d 1429, 1432 (Fed. Cir. 1997). Thus, functional features should be given patentable weight.

Yueh product is not a fish based food product.
Moreover, Yueh does not teach or suggest providing a fish based food product comprising a texturization aerated paste material and an extrusion cooked fibrous material. Moreover, Yueh teaches away from disclosing a fish based food product including these elements by teaching a method of forming a fish based food product using non-extrusion cooked fibrous material and non-textured aerated paste material. Therefore, Yueh does not teach or suggest independent claim 1.

Independent claim 2 also recites "a fish based food product comprising two materials, a texturization aerated paste material and a fibrous material." Again, Yueh does not disclose or suggest using such materials to comprise a fish based food product. Similarly, new independent claim 35 recites "a fish based food product comprising: ... a texturization aerated paste; and ... an extruded fibrous material." The differences are significant.

Because Yueh does not disclose or suggest the recited elements of a fish based food product, the present claims are not rendered obvious in light of Yueh. The Examiner also appears to be improperly using hindsight reasoning in alleging obviousness given the present invention as a template, especially when using a single reference which does not disclose all of the claimed elements. Therefore, each independent claim 1, 2, and 35 are in condition for allowance. Also, each dependent claim is also in condition for allowance. Accordingly, it is respectfully requested that the instant rejection be withdrawn.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: January 16, 2003

By: 

Monte L. Falcoff
Reg. No. 37,617

HARNESS, DICKY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600



ATTACHMENT FOR CLAIM AMENDMENTS

The following is a marked up version of each amended claim in which underlines indicates insertions and brackets indicate deletions.

1. (Twice Amended) A fish [Fish] based food product comprising two materials, a texturization aerated paste material and an extrusion-cooked [a] fibrous material, [the paste material being aerated by texturization,] the fibrous material including [incorporating] individual fibres or bundles of fibres with a diameter in a range of 1 μ m to 1 mm, the product presenting a heterogeneous texture and a firm and elastic overall consistency similar to that of fish or crustacean muscle tissue, wherein the [extruded] fibrous material[, which is obtained by extrusion cooking,] forms a network of macroscopic fibres whose diameters are in an order of 0.1 mm to 1 mm, and forms a ramified structure with microscopic fibres with diameters [in] on an order of 1 μ m to 0.1 mm.

2. (Twice Amended) Fish based food product comprising two materials, a texturization aerated paste material and a fibrous material, [the paste material being aerated by texturization,] the fibrous material [incorporating] including individual fibres or bundles of fibres with a diameter in a range of 1 μ m to 1 mm, the product presenting a heterogeneous texture and a firm and elastic overall consistency similar to that of fish or crustacean muscle tissue, wherein the fibrous material consists of small fibres with a diameter of 0.1 mm to 1 mm, the small fibres being obtained by

size reduction of a fish based preparation, or originating from natural fibres of marine products resulting from mechanical separation of myotomes.

7. (Twice Amended) Process according to claim 6 wherein paste material is textured[, usually by addition of air,] using homogenization, emulsification, and/or expansion and/or cutting before mixing with the fibrous material, at a rate of 0.5 part to 1 part air per 1 part of paste material, in order to obtain a gelling strength [in] on an order of 50 to 150 g/ cm², or after mixing with the fibrous material by adding between 0.3 and 1 part air per mixture part.

8. (Twice Amended) Process according to claim 6 wherein the fibrous material consists of a ramified network of fibres obtained from minced fish meat by means of a high-temperature and high-moisture extrusion cooking process comprised of the following steps:

- a. introducing fish meat into a single screw extruder;
- b. transferring fish meat from one end to [an other] another end of an extruder barrel, adjusting screw configuration and temperature within the barrel such that raw material of the fish meat successively undergoes a mixing and heating step up to a temperature of about 130° C, followed by a melting step with an increase in temperature of the material to above 130° C, and an increase in pressure to between 0 and 50 bars, such that plasticization of the transferred material takes place;

- c. extruding at the other end of the barrel the transferred material obtained after plasticization through a die adapted for texturization, shaping and cooling the transferred material such that a product with a ramified fibrous structure is obtained.

12. (Twice Amended) Process according to claim 11 wherein 25 to 100% of dry matter in the extruded fibrous material consists of [the] dry matter originating from fish and/or other marine products, and the dry matter comprises marine proteins in the form of minces, fillets, pulps, or surimi extracts.

24. (Twice Amended) Process according to claim 7 wherein the fibrous material is incorporated according to a statistical method[,] in a blender or mixing tank[, or according to a dynamic method].

25. (Twice Amended) Process according to claim 7 wherein a ^{sub-627}melting of the textured paste material is regulated as a function of a level of fats in the paste material, the paste material having [a] the fat level between 0 and 50%.

27. (Twice Amended) Process according to claim 26 wherein surface colour may or may not be added to the extruded or molded forms, the colour is added to [~] (at least one of raw forms), and [a] [~] and [a] [~] after the cooking step, by spraying, depositing colour on the strip or extrusion of a coloured paste material.